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3   UNITED STATES DISTRICT COURT

4   NORTHERN DISTRICT OF CALIFORNIA

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7   KINANN, et al.,

8   Plaintiffs,   No. C 10-2608 PJH

9   v.   **ORDER OF DISMISSAL**

10   CENTEX HOME EQUITY COMPANY,
11   et al.,

12   Defendants.
     _____/
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14   On March 25, 2011, this court granted defendant Centex's motion to dismiss

15   plaintiffs' complaint. The vast majority of plaintiffs' claims were dismissed with prejudice,

16   although plaintiffs were given leave to amend certain limited claims. Plaintiffs – who failed

17   to file an opposition to the motion to dismiss or appear at the hearing on the motion – were

18   advised via subsequent order on April 11, 2011 to file an amended complaint no later than

19   April 15, 2011. More than two weeks since the April 15 deadline have now passed, and

20   plaintiffs have failed to file an amended complaint.
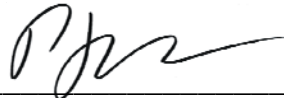
21   The court has considered the five factors set forth in Malone v. United States Postal

22   Service, 833 F.2d 128, 130 (9th Cir. 1987), and has determined that notwithstanding the

23   public policy favoring the disposition of actions on their merits, the court's need to manage

24   its docket and the public interest in the expeditious resolution of the instant litigation require

25   dismissal of this action. In view of plaintiffs' lack of response to this court's prior order, the

26   court finds there is no appropriate less drastic sanction.

27   Accordingly, this action is DISMISSED with prejudice as to defendant Centex

28   pursuant to Fed. R. Civ. Pro. 41(b) for plaintiffs' failure to prosecute. Having previously

United States District Court
For the Northern District of California

1 entered judgment as to defendant Fidelity, and dismissed plaintiffs' complaint without

2 prejudice as to remaining defendant All Fund for lack of service, the court hereby

3 DISMISSES the action in its entirety. The dismissal as to All Fund, however, remains

4 without prejudice.

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6 **IT IS SO ORDERED.**

7 Dated: May 3, 2011

8 _____
   PHYLLIS J. HAMILTON
   United States District Judge

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United States District Court
For the Northern District of California

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